
(2002) 09 OHC CK 0066

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2645 of 2002

Dharma Narayan Pattanaik alias Papu

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Arms Act, 1959 — Section 25
Constitution of India, 1950 — Article 226
Explosives Act, 1884 — Section 9
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 302, 307, 323, 324, 34

Citation : (2003) 24 OCR 91

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : D. Nayak, D.P. Pradhan, P.K. Mishra, P.K. Mohanty and N. Mohanty, for the Appellant; S.K. Das, Additional Government Advocate and M. Agrawal, Sr. Stg. Counsel (Cent.), for the Respondent

Judgement

A.K. Patnaik, J.—By order dated 6.10.2001 passed by the District Magistrate. Puri under Sub-section (2) of Section 3 of the National Security Act, 1980 (for short "Act, 1980") the petitioner has detained in the District Jail. Puri. The grounds of detention were served on the petitioner on 9.10.2001. The order of detention was approved by the State Government on 15.10.2001. A report on the detention of the petitioner was sent to the Central Government and the Central Government approved the order of detention on 30.10.2001. The petitioner made a representation against the order of detention to the State Government and the Central Government on 2.11.2001. The representation was received by the State Government on 3.11.2001 "and was rejected on 7.11.2001. The representation was received by the Central Government on 15.11.2001 and rejected on 16.11.2001. Aggrieved by his detention, the petitioner has filed this habeas corpus petition under Article 226 of the Constitution for quashing the same.

2. Mr. D. Nayak learned Counsel for the petitioner, submitted that the representation of the petitioner dated 2.11.2001 was received by the State Government on 3.11.2001 but it was rejected only on 7.11-2001. Accordingly to Mr. Nayak. therefore, there was a delay of 5 days on the part of the Sate Government to dispose of the representation of the petitioner against the order of detention and for his reason, the impugned order of detention is liable to be quashed.

3. We find from the counter-affidavit filed on behalf of the State Government that soon after receipt of the representation by the Stats Government on 3.11.2001. it was processed by the department but since the Chief Minister of Orissa was absent from the State on 3.11.2001 and on 4.11.2001 and was at Bolangir on 5.11.2001. the representation could not be disposed of on the aforesaid three days and was disposed of only on 6.11.2001 by the Chief Minister. The order rejecting the representation was communicated to the petitioner by a letter dated 7.11.2001 of the Government of Orissa. Home (Special Section) Department in Annexure-A/1 to the counter-affidavit filed by opposite party No. 1. Thus, the delay if any, in disposal of the representation of the petitioner against the order of detention has been adequately explained in the counter-affidavit filed on behalf of opposite party No. 1 and the order of detention cannot be quashed on the said ground.

4. Mr. Nayak. learned Counsel for the petitioner, next submitted that at the time the order of detention was passed on 6.10.2001, the petitioner was in fail custody having been arrested in connection with some other cases and the order of detention and the grounds of detention do not disclose that the detaining authority was aware of the fact that the petitioner was in custody. Mr. Nayak submitted that it is well settled by the Apex Court as, well as by this Court in a series of decisions that when a person is in custody, the detaining authority while passing the order of detention must show his awareness that the said person is in custody and thereafter, record his satisfaction on the basis of the cogent materials that he is likely to be released on bail and if released, he is likely to resort to activities which are prejudicial to the maintenance of public order.

5. We find from the averments made in paragraph 13 of the counter affidavit filed by the detaining authority, the District Magistrate. Puri (opposite party No. 1} that the order of detention was passed when the petitioner was on bail and was not in custody. We have also called for the records of the District Magistrate. Puri and have perused-the same and we find that the Superintendent of Police. Puri submitted a report dated 27.9.2001 on the antisocial activities of the petitioner and the said report was received in the office of the District Magistrate, Puri on 28.9.2001 and yet the District Magistrate. Puri did not pass any order of detention under Sub-section (2) of Section 3 of the Act. 1980 immediately so long the petitioner was in custody. The records further reveal that on 5.10.2001. the Superintendent of Police. Puri sent a letter No. 7538/019 to the District Magistrate. Puri stating therein that the petitioner had been forwarded on

remand to jail custody in Puri Town P.S. Case No. 118 dated 30.6.2001 u/s 307 IPC/9(b) of the I.E. Act. Sea-beach PS. Case No. 86 dated 1.7.2001 under Sections 341/324/379/506/34. IPC/25 Arms Act and No. 96 dated 29.7.2001 u/s 307/34 IPC/9(b) of the I.E. Act. In the said letter, it is also stated that the petitioner had been granted bail in the aforesaid three cases and consequent upon the last bail order passed on 4.10.2001 in Puri Town P.S. Case No. 118/2001 by the Second Ad hoc Additional Sessions Judge. Puri, he had been released from jail custody on 5.10.2001 morning. Relevant portion of the said letter No. 7538/DIB dated 5.10.2001 is quoted herein below:

On 4.10.2001 bail was granted to him in Town P.S. Case No. 118/ 2001 by the 2nd Adhoc Addl. Sessions Judge. Puri and prior to this bail was granted to him in Sea-beach P.S. Case No. 86/2001 by Sri P.K. Das, Hon'ble 2nd Addl. Sessions Judge. Puri. consequent upon the bail order, he has been released from jail custody on 5.10.2001, morning.

Hence, it is clear from the aforesaid communication sent by the Superintendent of Police, Puri to the District Magistrate Puri that the petitioner had been released from [art custody on 5.10.2001 and the order of detention was passed by the District Magistrate on 6.10.2001 when the petitioner was not in custody. The argument of Mr. Nayak. therefore, that the order of detention does not snow awareness on the part of the detaining authority to the tact that the petitioner was in jail custody and the satisfaction on the basis of the cogent material that he was likely to be released on bail from such jail custody, is misconceived on facts.

6. It was finally submitted by Mr. Nayak, learned Counsel for the petitioner that the grounds of detention would show that the alleged acts of the petitioner were all stale acts or acts directed against particular individuals. Mr.-Nayak vehemently argued that so far as the alleged acts of the year 2001 are concerned, they did not affect in any way the public order but affected individuals for which the petitioner could be tried under the ordinary criminal law and cannot be detained by an order of preventive detention. He submitted that the alleged acts of the year 2001 attributed to the petitioner detained in the grounds of detention are not such as would war tent detention under Sub-section (2) of Section 3 of the Act, 19b0.

7. Under Sub-section (2) of Section 3 of the Act, 1980. a person can be detained in preventive custody with a view to prevent him "from acting in any manner prejudicial to the maintenance of public order. The expression "public order" used in the Preventive Detention Act, 1950 was interpreted by the Supreme Court in the oft-quoted case of Arun Ghosh Vs. State of West Bengal, , in which the Supreme Court held:

...Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the

society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order....

Thus, as per the aforesaid decision of the Supreme Court, if an act of a person affects the even tempo of life of the community it disturbs the public order and has to be distinguished from act directed against individuals which do not disturb the community. In the said decision, the Supreme Court held that the question to be asked in each case is whether the act leads to disturbance of current of life of the community so as to amount to a disturbance of public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? Applying the aforesaid test to the facts of the case in *Arun Ghosh v. State of West Bengal* (supra), the Supreme Court found that all acts of molestation of Arun Ghosh were directed against the family of Phanindra C. Das and were not directed against the women in general from the locality and his assaults were also on individuals. On these facts, the Supreme Court held that however reprehensible the conduct of Arun Ghosh may be it cannot be said to amount to an apprehension to breach of public order for which alone his detention could be ordered.

8. In *Ram Ranjan Chatterjee Vs. The State of West Bengal*, , the Supreme Court had the occasion to deal with the expression "public order" as used in the maintenance of Internal Security Act, 1971 and after taking note of the observations of the Supreme Court in *Arun Ghosh v. State of West Bengal* (supra) on the meaning of the expression "public order" held:

...The concentric concepts of law and order and public order may have a common "epicenter" but it is the length, magnitude and intensity of the terror-wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting public order from that concerning "law and order".

As per the aforesaid decision of the Supreme Court in *Ram Ranjan Chatterjee v. The State of West Bengal* (supra), therefore, it is the length, magnitude and intensity of terror-wave unleashed by a particular eruption of disorder that helped distinguish it as an act affecting "public order" from that concerning law and order, in the said case, the ground of detention were three. The first incident related to a bomb explosion in which one person died in a thickly populated area thus creating panic amongst the local people. The Second related to an incident which took place in Kistapur Bazar at 8. P.M. in which the detenu and his associates tried to extort grocery on pain of instant death from the shopkeeper and customers fled away from the shop for fear of life and consternation prevailed in the area and all shops in the Bazar closed down immediately. The third is an incident in which bombs were recklessly hurled at the villagers causing panic and disruption and even flow of life in the locality. The Supreme Court held that the detention order was passed after due consideration on relevant grounds.

9. In *State of U.P. Vs. Hari Shankar Tewari*, , the Supreme Court took note of its earlier decision on the meaning of the expression public order but held that in the final analysis one has to turn to the facts of each case to find out whether the activities upon which the order of detention is grounded go under the classification of the "public order" or belong to the category of the law and order". The Supreme Court further held that no hard and fast rule can really be evolved to deal with the problems of the society and every possible situation cannot be brought under the watertight classification and a set of tests to deal with them cannot be laid down and as and when an order of detention is questioned, it is for the Court to apply these well known tests.

10. In *State of U.P. v. Kamal Kishore Saini* AIR 1936 SC 208, which was a case of detention u/s 3(2) of the Acl, 198C, the Supreme Court found that the criminal acts referred to in ground No. 1 were to the effect that the complainant's brother had been shot and was lying in a pool of blood and a crime case u/s 302 IPC was registered at Ghazipur Police Station and the Supreme Court held that this incident is confined to individual persons and does riot in any way affect the even tempo of life of the community nor does it affect the peace and tranquillity of the people of that particular locality where the crime had been committed. But, the Supreme Court also found that ground No. 2 was to the effect that the complainant went to Lucknow Jail along with son and son-in-law to see an accused in the District Jail and while they were returning in rickshaw and reached a little distance from the jail near the residences of the Jail Superintendent at about 1.45 P.M. The detents came on a scooter, stepped it and fired at the son and the son-in-law and the son and the son-in-law ran helter and skelter and while the son died at the spot, The son-in-law and the rekshaw puller sustained injuries and a crime case u/s 302 307 IPC was registered. On these facts, the Supreme Court held that as the firing was at the put; lie street during the day time, the incident did affect the public tranquility and the even tempo in the public life of the people in the locality and the High Court was not right that it did not affect in any way the public order.

11. Applying the law laid down in the aforesaid decisions to the present case, it appears from the grounds of the detention served on the petitioner that the petitioner is alleged to have committed various acts in the years 1998, 1999. 2000 and 200i for which cases have been registered under different provisions of the Indian Penal Case Indian Explosive Act and the Arms Act. Obviously, the order of detention having been passed on 6.10.2001, the alleged acts of the petitioner of the years 19S8, 1999 and 2000 are stale acts and are not proximity in time so as to justify the said order of detention. But the acts of the petitioner in June and July, 2001 detailed in the grounds of the detention are proximity in time to the said order of detention passed on 6.10.2001. The Court will, therefore, have to examine as to whether the said alleged acts of the petitioner in June and July, 2001 affected the even tempo of life in the community and public order of merely some individuals.

12. The incident which took place on 30.6.2001 has been stated in paragraph 13 of the grounds of the detention. It has been stated therein that on 30.6.2001 at about 6 P.M. when one Banti Singh was sitting on the verandah of Nagakoteiaga, the petitioner along with his criminal associates reached there and threw a bomb towards him with an intention to kill him. Owing to the bomb-blast, the complainant sustained multiple bleeding injuries on his neck, hand and leg and Pun Town P.S. Case No 118 dated 30.6.2001 u/s 307 IPC/9(b) of the Indian Explosive Act was registered. This incident, as narrated in paragraph 13 of the grounds of the detention, affected the complainant and did not disturb the tempo of life of the general community in the locality and thus cannot by itself be a relevant ground for detaining the petitioner under Sub-section (2) of Section 3 of the Act, 1960.

13. The next incident is narrated in paragraph 10 of the grounds of detention. It is stated therein that on 1.7.2001 at about 7 A.M. the petitioner along with his criminal associates being armed with deadly weapons like sword, bomb, bhujali and illicit country-made gun, etc. tried to snatch away the gold chain from the neck of a tourist and when one Prasanna Kisnore Das of Balisah" protested against his acts, the petitioner attacked him by means of a sword and his associates attacked him by means of illicit country-made gun and he sustained bleeding injuries on both his hands and Town P. Section Case No. 86 dated 1.7.2002 under Sections 341/323/324/379/506/34 IPC and Section 25 of the Arms Act was registered. These alleged acts of the petitioner and his associates did not merely affect a single individual but had the tendency of affecting the tourists visiting Puri and the general tempo of the tourist activities at Puri.

14. In Paragraph 11 of the grounds of detention, the acts alleged to have been committed by the petitioner and his associates on 28.7.2001 and 29.7.2001 have been narrated. It is stated that on 28.7.2001 at about 10.30 P.M. some unknown persons tried to attack on a foreign liquor shop of Bhubaneswar Mishra by means of a bomb and again on 29.7.2001 at about 11 A.M. the petitioner and his associates threatened the complainant to kill him and gave upon threat to close down the shop. The petitioner exploded bombs and terrorized the general public which severally affected the public order and tranquillity of the locality and sea-beach P.S. Case No. 96 dated 29.7.2001 u/s 307/34 IPC/9(b) of the I.E. Act has been registered. Obviously the aforesaid acts of the petitioner alleged to have been committed on 28.7.2001 and 29.7.2001 did not merely affect Bhubaneswar Mishra but the local public and the general life and tranquillity of the locality.

15. The aforesaid three incidents taken together were sufficient to cause an apprehension in the mind of the detaining authority that if the petitioner is not detained under Sub-section (2) of Section 3 of the Act, 1960 he may resort to activities prejudicial to the maintenance of public order. The detaining authority and the end narration of the incidents has stated in the grounds of detention

The above series of the incidents clearly indicate your repetitive grievous criminal activities. After release on bail each time you have indulged yourself in fresh

violence and crime. Hence. I am fully satisfied on the report of Superintendent of Police. Pun to detain you under National Security Act which will prevent you from committing further crime and peace and tranquillity can be maintained in tourist place like Puri town. Police Station and Pun Sea-beach Police Station areas.

In our considered opinion, the grounds on which the petitioner has been detained in custody are germane and relevant to the maintenance of public order and the impugned order of detention passed by the District Magistrate. Pun under Sub-section (2) of Section 3 of the Act, 1980 cannot be quashed on the ground that the alleged acts of the petitioner narrated in the grounds of detention are acts directed against different individuals and did not affect in any way public order. No other ground has been urged Mr. Nayak, learned Counsel for the petitioner, at the time of hearing of this habeas corpus petition.

16. For the reasons stated above, we are not inclined to interfere with the impugned order of detention and we accordingly dismiss this petition. Considering the facts and circumstances of the case, the parties shall bear their own costs.

M. Papanna, J.

17. I agree.